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NOV 19 2018

**STATE BAR COURT
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LOS ANGELES**

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

| | | |
|--|---|------------------------|
| In the Matter of |) | Case No. 16-O-17764; |
| |) | 17-O-04394-YDR (Cons.) |
| MICHAEL JOHN BROWN, |) | |
| |) | DECISION |
| A Member of the State Bar, No. 115473. |) | |
| _____ |) | |

Respondent Michael John Brown (Respondent) was charged with seven counts of misconduct involving two client matters. Even though Respondent had notice of the trial date, he failed to appear at the trial, and his default was entered. Thereafter, the State Bar of California, Office of Chief Trial Counsel (OCTC) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity to be heard. The rule provides that, if an attorney's default is entered for failing to appear at trial, and if the attorney fails to have the default set aside or vacated within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

In the instant case, the court concludes that all of the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to the practice of law in California on December 3, 1984, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On December 19, 2017, the State Bar filed and properly served an NDC on Respondent by certified mail, return receipt requested, at his then membership records address. This NDC, for case number 16-O-17764, was also sent to Respondent by U.S. mail on that same date. Respondent filed a response to the NDC on January 12, 2018.

Respondent participated in person and with counsel at a status conference on January 29, 2018. On February 5, 2018, new counsel was substituted in for Respondent. On March 6, Respondent appeared in person and with counsel for a settlement conference. On March 16, OCTC filed a pretrial statement, and on March 19, Respondent filed a pretrial statement.

Also on March 19, 2018, OCTC filed a second NDC in case number 17-O-04394. This NDC was properly served on Respondent through his counsel the same day by certified mail, return receipt requested. On March 23, 2018, Respondent filed a response to this second NDC.

On March 21, 2018, Respondent filed a motion to abate the proceedings in case number 16-O-17764.

On April 4, 2018, the court filed an order setting the trial for 10:00 a.m. on July 17 - 19, 2018. The order setting the trial was properly served by first-class mail, postage prepaid, to Respondent at his counsel's address. (Rule 5.81(A).) The order also set the matter for further

status conference by telephone on June 18, 2018, and for an in-person pretrial conference on July 9, 2018.

Also on April 4, 2018, an entry shows that, on motion of OCTC, case number 16-O-17764 was abated and the previously scheduled pretrial conference and trial dates were vacated.

On June 18, 2018, all parties appeared by telephone. The court ordered the two cases represented by the two NDC's consolidated, case number 16-O-17764 unabated, and the trial date of July 19, 2018, vacated. The consolidated cases were then set for trial on July 17-18, 2018. This notice was properly served on Respondent's counsel by first-class mail, postage prepaid, on June 19, 2018.

Respondent filed a pretrial statement on July 2, 2018, and OCTC filed a pretrial statement on July 3, 2018.

Thereafter, on July 16, 2018, Respondent filed a notice of intent to default, indicating that he would not be appearing at the trial scheduled for July 17, 2018, either personally or through counsel, and intended to default for failure to appear at trial.

The State Bar appeared for trial on July 17, 2018, but Respondent did not. The court entered Respondent's default in an order filed the same day. The order was properly served on Respondent by certified mail, return receipt requested, through Respondent's counsel. (Rule 5.81(B).) The order notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed Respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On September 19, 2018, the State Bar properly filed and served a petition for disbarment on Respondent.³ As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had any contact with Respondent since his default was entered; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent does not have a prior record of discipline; and (4) as of September 19, 2018, the Client Security Fund has not made any payments resulting from Respondent's misconduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate his default. The case was submitted for decision on October 23, 2018.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

Case Number 16-O-17764 (Gilmore Matter)

Count One – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by depositing client funds in his client trust account and thereafter failing to maintain sufficient client funds in his client trust account to pay the amount that he owed to his client Lucken Gilmore and/or his client's lienholder Kenneth M. Greenberg, D.C.

Count Two – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude - misappropriation) by misappropriating approximately \$2,993.71 that his client or the client's lienholders were entitled to receive.

³ The petition for disbarment was served by certified mail, return receipt requested, to Respondent through his counsel of record.

Case Number 17-O-04394

Count One – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (commingling personal funds in client trust account) by depositing client funds in his client trust account and thereafter failing to promptly remove his earned contingency fee and costs to which he was entitled from his client trust account and instead leaving those funds in the account to be withdrawn as needed.

Count Two – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by depositing client funds in his client trust account and thereafter failing to maintain sufficient client funds in that account to pay the amount that he owed to his client Lisa Love or her health care providers.

Count Three – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to maintain complete records/render complete accounts) by failing to prepare and maintain for his client Lisa Love a written ledger, and failing to complete for her a monthly reconciliation for written ledgers, a written journal, and bank statements.

Count Four – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude - misappropriation) by misappropriating the sum of \$7,834.19 that his client Lisa Love or her health care providers were entitled to receive.

Count Five – Respondent willfully violated Business and Professions Code section 6106 (moral turpitude – misrepresentation) by stating to one of his client Lisa Love’s health care providers that the total settlement in the client’s case was \$10,000 when Respondent knew the statement was false because he had settled the case for \$15,000.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and Respondent’s disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of this proceeding and adequate notice of the trial date prior to the entry of his default;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to appear for trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Discipline - Disbarment⁴

It is recommended that **Michael John Brown**, State Bar number 115473, be disbarred from the practice of law in California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order imposing discipline in this matter⁵.

⁴ Because the record contains no clear and convincing evidence as to whom restitution is owed, the court declines to order restitution in this case.

⁵For purposes of compliance with rule 9.20(a), the operative date for identification of "clients being represented in pending matters" and others to be notified is the filing date of the Supreme Court order, not any later "effective" date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Respondent is required to file a rule 9.20(c) affidavit even if Respondent has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney's failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension,

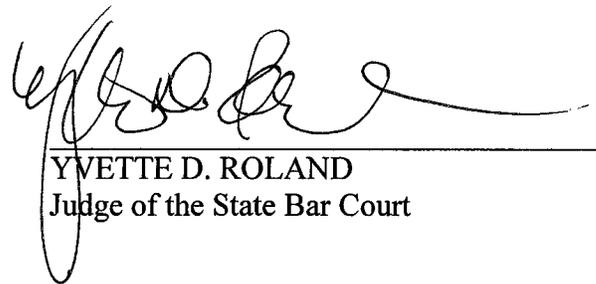
Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against a member who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **Michael John Brown**, State Bar number 115473, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: November 16, 2018



YVETTE D. ROLAND
Judge of the State Bar Court

revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on November 19, 2018, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

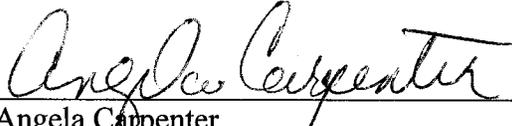
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RIZZA D. GONZALES
CENTURY LAW GROUP LLP
5200 W CENTURY BLVD STE 345
LOS ANGELES, CA 90045

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 19, 2018.



Angela Carpenter
Court Specialist
State Bar Court